and later p. 24

> "In my judgment the rule is of general application that .... where a fund is being distributed, a party cannot take anything out of the fund until he makes good what he owes to the fund. It is immaterial whether the amount is actually ascertained or not."

In the case of *In re Towndrow* (1911) 1 Ch. 662 Parker J. stated the principle in the following terms:—

> "The real principle is that, where there is an aggregate fund in which the trustee is beneficially interested, and to which he owes something, he must be taken to have paid himself that amount on account of his share"

and on p. 668 he says:—

> "The theory on which that rule is based is that the Court treats the trustee as having received his share by anticipation, and the answer to any claim by the trustee is 'you have already received your share, you have it in your own hands'."

That case also decides that a specific legacy cannot be retained to answer an indebtedness to the residuary estate.

The effect of the above authorities would appear to be that the claim against the beneficiary or trustee beneficiary must be a claim in respect of a debt which he owes to the estate. He is deemed in equity already to have been paid, and the principle clearly applies to the claim against Seah Eng Choe, who has received advances to the extent of $1,500 and was indebted to the testator in this sum. But the claim against the other respondents is something very different. It is alleged that they are liable for devastavits. These claims have not yet been established and such claims are more in the nature of claims for damages for failure to do their duty as trustees. If the claims had been established they might be described as judgment debts, but for the present it cannot be alleged that they are debts in the sense that the trustees have ever taken the sums claimed from the trust estate.

It cannot be said that part of the trust estate has already come into their hands or that they have been paid their shares *pro tanto*.

In my opinion therefore the applicant is really trying to obtain a lien in respect of a claim for breach of trust which may or may not be established. Such a claim does not fall within the principle of any of the decided cases. There is the further point that the sum of $18,115 is due to the residuary estate, whereas part at all events of the moneys now payable to the beneficiaries is in respect of their interest in a specific legacy of immovable estate to which the residuary legatees have no claim whatever. Even therefore if the trustee had this so-called right of retainer, it would only apply to such part of the sums payable to each of the respondent trustees as is properly attributable to income from the residuary estate.

The applicant will accordingly be entitled to retain the sum of $557.92 payable to Seah Eng Choe and to defend any action which he may bring in respect thereof at the expense of the estate. There will be no order on the remainder of the summons. The costs of the applicant will be taxed as between solicitor and client and paid out of the residuary estate. Other costs will be reserved. A special fee of $50 is allowed under O. 62 r. 49(1).

Order Accordingly.

Solicitors for applicant-trustee:—*Drew & Napier.*

Solicitors for Seah Eng Teck:—*Johannes & Sammy.*

Solicitors for respondents co-trustees:—*Sisson & Delay.*

[APPELLATE CRIMINAL JURISDICTION]
TERRELL, Ag. C.J.
July 5, 1937.

REX v. SOH ENG CHIANG.

[SINGAPORE MAGISTRATE'S APPEAL No. 46 of 1937]

Common Gaming Houses Ordinance (Cap. 30) Ss. 4, 9—public lottery—Chap Ji Kee—expert evidence—sufficiency—presumption—interpretation of Statute—"Objects and reasons"—whether relevant.

In a prosecution under Section 4 (c) of the Common Gaming Houses Ordinance for assisting in the carrying on of a public Chap Ji Kee lottery a detective who claimed to be an expert in Chap Ji Kee Lotteries gave evidence as to the *modus operandi* of such a lottery and gave as his opinion that a certain paper writing was a schedule of stakes. The witness' qualifications as an expert were uncontroverted nor was his evidence contradicted. The trial Magistrate rejected the evidence as recording a matter of opinion only and as being insufficient, and acquitted the accused.

Held, on appeal to the High Court against the acquittal, that the evidence given though succinct was sufficient to raise a *prima facie* case against the accused.

Held further, that in construing an Ordinance the professed objects of the legislature on the introduction of the bill are irrelevant.

MAGISTRATE'S APPEAL.

Storr, Crown Counsel, for the Crown (Appellant).

Fung, for the Respondent.

The facts sufficiently appear from the grounds of judgment below.

Cur. Ad. Vult.

TERRELL, AG. C. J.—The accused was charged under section 4 (c) of Chapter 30 (The Common Gaming Houses Ordinance) of assisting in the carrying on of a Public Chap Ji Kee Lottery.

The only substantial evidence of the lottery was exhibit p. 6. Evidence was given by one Lee Kim Swee, a detective attached to the Detective Station, and who claimed to be an expert in Chap Ji Kee lotteries. He stated very shortly how a Chap Ji Kee Lottery is worked and gave it as his opinion that exhibit p. 6 was a schedule of stakes in such a lottery.

This witness's qualifications as an expert were not challenged, and evidence having been given, and not contradicted, that the paper was a schedule of stakes, a presumption immediately arises under section 9 of the Ordinance, which reads as follows:

> "A person selling lottery tickets or found in possession of ten or more lottery tickets or of any account, memorandum or record of stakes or wagers in or relating to a lottery shall be presumed until the contrary is proved to be assisting in a public lottery then in progress."

According to the evidence, exhibit p. 6 was a "memorandum or record of stakes or wagers" within the meaning of the section. The learned magistrate rejected the evidence of Lee Kim Swee as recording a matter of opinion only and as being insufficient.

In particular he complains in his grounds of judgment that the witness did not give an adequate explanation of what a Chap Ji Kee lottery was.

In my opinion the evidence given by Lee Kim Swee was sufficient to raise a *prima facie* case. He was not called upon to explain all the details of such a lottery, but the statement that he gave though succinct was sufficient. It is certainly not the duty of a magistrate to supplement the case for the prosecution, but when the evidence is sufficient, but not properly understood, it is always open to a magistrate to question the witness further and ascertain further details for the purpose of satisfying himself upon any point about which he may feel a doubt.

I feel no doubt that the evidence called and presumption arising under section 9 of the Ordinance raised a *prima facie* case which the accused should have been called upon to answer.

The appeal will therefore be allowed and the acquittal set aside. The case should be remitted to a magistrate's Court for retrial. The respondent can be allowed bail in the sum of $100 with surety.

I should add that counsel for the Crown invited the Court to interpret section 9 of the Ordinance (which was introduced by an amendment in 1919) in the light of the 'objects and reasons' laid before the Legislative Council. The purport of a section can however only be gathered from the section itself, and from an examination of the statute as a whole, and the professed objects of the legislature on the introduction of the bill are quite irrelevant.

Appeal allowed.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.